

DEPARTMENT OF VETERANS AFFAIRS
Justification and Approval
For
Other Than Full and Open Competition

1. **Contracting Activity:** Department of Veterans Affairs, Network Contracting Office (NCO), Nashville/Murfreesboro (TVHS), Tennessee

2. **Nature and/or Description of the Action Being Proposed:**

This is a request for other than full and open competition for the procurement of Home Oxygen Services from the incumbent of an expired contract, Ed Medical, Inc 6343 Harding Place, Nashville, TN [REDACTED]. The procurement process was previously interrupted by a protest ruling. The NCO initiated a new procurement and it has been interrupted by three subsequent protests. A ruling on the most recent protest by the Department of Justice (DOJ) has not been rendered to date and there is no projected date. This interim contract will provide Home Oxygen Service coverage during the gap between the expired contract and the new contract to be awarded after protest ruling.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:**

The contractor will provide Home Oxygen Supplies and Services for Veterans and Beneficiaries of the TVHS VA Medical Center (VAMC) catchment area. The VAMC currently serves an estimated 9,800 oxygen-using patients covering parts of Northern Alabama, Western Georgia, Eastern Arkansas, Southwestern Kentucky, Northeastern Mississippi and Tennessee. Required services include storage, delivery, set-up, adjustment, patient/caregiver instructions and recovery of equipment. The contractor has applicable expertise in government acquisition and program management disciplines.

4. **Statutory Authority Permitting Other than Full and Open Competition:** 41 USC §253(c), as implemented by FAR 6.302.

- (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
() (2) Unusual and Compelling Urgency per FAR 6.302-2;
() (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
() (4) International Agreement per FAR 6.302-4
() (5) Authorized or Required by Statute FAR 6.302-5;
() (6) National Security per FAR 6.302-6;
() (7) Public Interest per FAR 6.302-7;

5. **Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** Only One Responsible Source (FAR 6.302-1). The incumbent is currently performing this complex

requirement at a satisfactory level. Accordingly, Ed Medical, Inc is the only firm capable of providing the supplies and services described in Section 3 above without the Veteran's Health Administration experiencing unacceptable delays in fulfilling its requirements. A change in vendor would require finding a vendor that is capable of servicing approximately 9,800 Veterans on home. The Vendor would need to have access to the equipment necessary to make this change and background checks would need to be completed on the new employees which would result in a delay in service; therefore, the only option available is to sole source to the incumbent. A disruption in services is not an acceptable solution. We have received a total of three protests regarding this requirement. Two against the previous solicitation in which a ruling caused the Government to cancel that solicitation and one for cancelling the solicitation [REDACTED]. We are awaiting a ruling on the most recent protest to the DOJ. It is imperative that our patients have home oxygen services that are uninterrupted. Our contract has expired which has made it necessary to put in place an interim contract. This option represents the best value for the government. [REDACTED]

~~_____~~ The Incumbent is uniquely qualified, among other things, because they have been vetted for compliance with VA policies, including security, privacy and payment protocols

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

A competitive procurement was in process and will be undertaken after litigation is resolved. Changing vendors while under protest is not acceptable (see B-299595.3, 2007 CPD P 126, 2007 WL 2034990 (Comp.Gen.) due to previous court decisions. There are approximately 9,800 Veterans on the home oxygen program which have been serviced by this contractor. The vast geographical area that is serviced by this contractor makes it difficult and expensive to have the equipment switched out. The contractor is responsible for providing all the equipment and supplies that are necessary to service this contract. The DOJ has been contacted several times by Regional Counsel requesting a final ruling. There is no anticipated award date for a new IDIQ contract award in the immediate future.

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable:

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

Market research was completed for the solicitation currently under protest. The Government will solicit and award under NAICS Code 532201. ~~_____~~

9. Any Other Facts Supporting the Use of Other than Full and Open Competition:
The following determinations are made:

- a. Requiring NCO 9 to stop work during the pendency of the current DOJ protest will severely impact the ability of VISN 9 Medical Facility to meet the mission readiness to serve this vital need to our Veterans.
- b. Continuation of the service with the Incumbent is necessary in order to provide essential, critical and life threatening support to this VISN 9 Medical Facility.

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition: ~~_____~~

11. A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required: ~~_____~~

12. Requirements Certification: I certify that the requirement outlined in this justification is a Bone Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

13. Approvals in accordance with FAR 6.304

- a. Contracting Officer's Certification (required): I certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

Review by:

Ernest Yelling
Ernest Yelling, Chief Prosthetics Lexington

9/21/2012
Date

Prepared by:

Donald R. Larson
Donald R. Larson, Contracting Officer

9/21/2012
Date

Reviewed by:

Jon E. Dollans
Jon E. Dollans, Contracting Officer

9/21/12
Date

- b. NCM (Required \$2K and above): I certify the justification meets requirements for other than full and open competition.

Recommend Approval:

Linda S. Greaves
Linda S. Greaves, NCM, NCO 9
NCO 9

9/24/12
Date

- a. \$40 (if over \$500K): I certify the justification meets requirements for other than full and open competition.

Recommend Approval:

Rick Lemmon
Rick Lemmon
Acting Director
Service Area Office, Central

2 Oct 12
Date

- b. VHA HCA Review and Approval: I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval (if over \$10 million) or approve (\$500K to \$10 million) for other than full and open competition.

Approved/Disapproved:

Norbert Doyle
Norbert Doyle
Chief Procurement and Logistics Officer
VHA Head of Contracting Activity (HCA)

10/25/12
Date